

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re M.S. et al., Persons Coming Under the
Juvenile Court Law.

H042820
(Monterey County
Super. Ct. Nos. J45843, J47966)

MONTEREY COUNTY DEPARTMENT
OF SOCIAL & EMPLOYMENT
SERVICES,

Plaintiff and Respondent,

v.

J.R.,

Defendant and Appellant.

Father J.R. appeals the juvenile court's order terminating his family reunification services with daughters M.S. (born in December 2010) and J.R. (born in May 2012).¹ Father argues that the Monterey County Department of Social and Employment Services (Department) failed to provide him reasonable family reunification services. For the reasons stated here, we will affirm.

I. JUVENILE COURT PROCEEDINGS

A. ORIGINAL DEPENDENCY PETITION

In August 2011, father and J.S. (mother) brought then seven-month-old M.S. to the emergency room because she was having a seizure. A toxicology test showed that

¹ As father and his daughter J.R. share the same initials, we refer to him as father; references to J.R. are to his daughter.

M.S. had methamphetamine in her system. Based on medical professionals' reports that mother appeared under the influence of an undisclosed controlled substance, the Department filed a Welfare and Institutions Code section 300, subdivision (b) petition on behalf of M.S. The petition alleged that M.S. suffered, or was at substantial risk of suffering, serious physical harm or illness as a result of parents' failure or inability to supervise her.²

M.S. was declared a dependent in September 2011. Parents lost physical custody and received family reunification services. Mother gave birth to parents' second daughter, J.R., in May 2012 while she was living in a sober living environment.³ Jurisdiction was terminated and the original dependency was dismissed in December 2012, based on parents' engagement in services and progress toward alleviating the conditions on which jurisdiction had been based.

B. FATHER'S DOMESTIC VIOLENCE CONVICTION

In January 2014, a witness reported opening a door and seeing father holding J.R. in one arm and punching mother in the head with his other hand. Mother sustained large lumps on her head.⁴ Father was charged with inflicting corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a)). In May 2014, father was convicted and placed on three years' felony probation, including a condition that he serve 180 days in county jail.

C. OPERATIVE DEPENDENCY PETITIONS

New section 300, subdivision (b) petitions were filed (one for each child) in July 2014. According to those petitions, mother was found dragging her children through a strawberry field. Mother was screaming that she wanted to die and was picking up her daughters and throwing them into a barbed wire fence. J.R. sustained bruises and

² Unspecified statutory references are to the Welfare and Institutions Code.

³ No petition was filed as to J.R. because mother was in a treatment program.

⁴ The offense summary is based on a police report summary contained in a status review update prepared by the Department.

scratches. Responding authorities reported that mother was initially unable to provide them with her name or those of her children. Mother was placed on a section 5150 psychiatric hold and the children were placed in protective custody because father's whereabouts were unknown. The next day, mother tested positive for methamphetamine and marijuana. A few days later, the juvenile court held a hearing on the new petitions, detained the children, and placed them in a foster home.

D. JURISDICTION AND DISPOSITION

According to the Department's jurisdiction and disposition report, father first contacted the Department nine days after the July 2014 petitions were filed. He reported that he and mother had been separated for seven months. The report stated that his "drug of choice" was methamphetamine. He requested assistance with services and housing. After making contact with the Department, father had consistently participated in supervised visitation with the children but missed one visit due to an injury. Mother confirmed that she and father were separated, stated that she wanted to focus on getting the children back, and had not visited the children because she was still serving time in county jail related to the strawberry field incident.⁵ The report stated that M.S. and J.R. were generally healthy and developmentally on target.

M.S. and J.R. were declared dependents after a hearing in September 2014. They were designated as a sibling group, which expedited the dependency timeline. (See § 361.5, subd. (a)(1)(C) ["for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under three years of age on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services for some or all of the sibling group

⁵ Mother was convicted of, among other things, inflicting corporal injury on a child (Pen. Code, § 273d, subd. (a)) as a misdemeanor in July 2014. She was placed on five years' conditional probation, which included a condition that she serve 120 days in county jail.

may be limited as set forth in subparagraph (B)"]; see also *id.* at subd. (a)(1)(B) [limiting court-ordered services to between six and 12 months “[f]or a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age ... unless the child is returned to the home of the parent or guardian”].) The court ordered that both parents receive family reunification services.

Included in the findings attached to the jurisdiction and disposition hearing minute order was an admonition informing mother and father that “if a parent ... fails to participate regularly in any court-ordered programs or to cooperate with or avail himself ... of services provided as part of the ... case plan for the child, then the court may terminate efforts to reunify such parent”

E. SIX-MONTH STATUS REVIEW

According to the status review report filed before the six-month status hearing, the children had been moved from foster care to a maternal relative’s house in North Hollywood in February 2015. The children were still healthy and developmentally on target, but M.S. was now in therapy after displaying violent behavior toward her younger sister. Mother had engaged with services and therapy sessions, had started taking prescription medication to treat mental health issues, and interacted well with the children during visits. However, the report expressed concern that mother did not understand the severity of her mental health issues and was not taking responsibility for her actions in the strawberry field. Mother reportedly still believed a man had been following her with a knife before she went to the field. Mother told the social worker that the responding officers tried to set her on fire and snap her neck.

The status review report noted that father was actively participating in the Door to Hope outpatient substance abuse program. He had passed all drug tests and had a mentor. Father had not taken any parenting classes and was “currently on the waitlist for therapy.” Father was nurturing and affectionate during visits with his daughters but had missed two visits due to being sick. Father was taking a domestic violence class as a

condition of probation; it was the second time he had been required to take that class as a probation condition.

According to the status review report, father had claimed during a family team meeting that he was the victim in the domestic violence incident with mother that led to his felony conviction, and he also denied that his daughters were present when the incident occurred. The status review report stated it was “extremely concerning that [father] would state he was the victim in the domestic violence and that the children never witnessed the domestic violence” because “the police report clearly states he was the perpetrator” and was holding J.R. The report recommended terminating reunification services as to both parents.

At a hearing in March 2015, the court continued the matter for one month. The minute order for that hearing states that father’s counsel was present but father was not.

At the continued status review hearing in April 2015, father once again did not appear. Father’s counsel informed the court: “I did not speak with him. I spoke with his father. [His] [f]ather believes that he may be working right now” The court ordered continued reunification services for both parents.

F. TWELVE-MONTH STATUS REVIEW REPORT

According to the status review report for the 12-month review hearing, the children were still healthy and developmentally on target, but M.S. continued to act violently toward J.R., and M.S. was still seeing a therapist. Mother had made progress, but the social worker recommended terminating reunification services because the social worker believed mother still did not appreciate the severity of her mental health issues.

Regarding father, the status review report noted that the social worker had not been able to contact him in some time. The report stated that the social worker left a message with father’s dad. The report noted that father’s “telephone number changed several times and the numbers were not working.” Father’s mentor from the drug treatment program had not seen father in two or three months. The report stated that

father was on the waitlist for therapy. Father still had not taken any parenting classes and “because his telephone number has changed[,] they have been unable to get in contact with him.” The report recommended that father’s reunification services be terminated based on his inability to maintain contact with the Department.

G. CONTESTED HEARING AND TERMINATION OF FATHER’S SERVICES

The parents requested a contested 12-month status review hearing, which occurred in September 2015. At that hearing, the assigned social worker testified in support of her recommendation that family reunification services be terminated. As relevant to father’s appeal, the social worker testified that after the previous hearing, which father had missed, he approached the social worker outside the courtroom and yelled at her. Father told her during that encounter that it was not fair that his children had not been returned to him, that he did not want them returned to mother, and that he felt that it was better that they remain with their relatives in Southern California. She stated that she did not have any contact with father for two to three months; she tried calling the phone numbers he had provided but could not get through. She said she left “voice mails on one of the telephones, and then he called and said that phone [] wasn’t working,” leading her to leave voicemails with his girlfriend. His number changed four or five times. He never asked to go to North Hollywood to visit his children.

The social worker acknowledged that she missed one call from father when she was on a vacation over the Fourth of July but that she called him back the next Monday. Father had tested positive for marijuana on two occasions, August 20 and September 21, the morning of the contested 12-month status review hearing. Regarding therapy, the social worker stated that it was her understanding that the therapy provider “tried to contact him for the group therapy, but they weren’t able to get ahold [*sic*] of him.” The social worker reported that during an August 2015 phone call father stated “ ‘I take full responsibility’ ” for the domestic violence incident that led to his felony conviction.

A supervising therapist testified about her involvement in the case. She testified that she supervised the Family Assessment Support and Treatment team and that she referred father to a parent process group therapy program in February 2015. She acknowledged, based on the records available to her, that it did not appear that father had ever received any therapy. On cross-examination, she acknowledged that father was not present when she referred father to the group therapy program and that there was no record of anyone attempting to contact father about starting group therapy.

Father also testified, stating that he had been told there was a waiting list for therapy and that he was never told to begin attending group therapy. Father acknowledged that there had been “contact issues” that prevented him from staying in contact with the social worker but stated that he “always did have a message phone, though.” He described a message phone as “[w]here she could call and leave messages, and I would be able to contact her after I got the message.” He said his father’s phone was one of the message phones. Father acknowledged that he did not inform the social worker or the Department when he changed his telephone number and stated: “There is no explanation for why that was. There was always a message phone, and I felt like if she needed to contact me, she would be able to get to that message phone.” Regarding the domestic violence incident that led to his felony conviction, father continued to deny that his daughters witnessed any violence and also denied that there was any physical violence at all.

The juvenile court continued mother’s reunification services for another six months but terminated father’s reunification services. The court reasoned that father’s situation was different than mother’s for several reasons. Father was “going through the 52-week domestic violence [counseling] class for a second time, which means that he has two convictions for domestic violence cases.” Though father testified that he now took responsibility for the domestic violence incident, the court believed that “what he was doing was, he was preaching to the choir and telling the Court what he thought I wanted

to hear as opposed to being really sincere in his thought process and his feelings.”

Regarding therapy, the court suggested that father bore some of the responsibility for any deficient provision of family reunification services because he did not maintain consistent contact with the Department. As for father’s “message phone” argument, the court credited the social worker’s testimony about not being able to reach him and concluded “I don’t think that the father has appropriately stayed in contact with the department[,] as he was required to do.”

II. DISCUSSION

A. LEGAL PRINCIPLES AND STANDARD OF REVIEW

Family reunification services should be designed to remedy the problems that led to removal of the children. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.) Reunification plans must be tailored to the specific needs of the family. The social services agency must make a good faith effort to offer services that address the parents’ problems. “However, in most cases more services might have been provided and the services provided are often imperfect.” (*Ibid.*) As such, we do not assess whether the services provided or offered were perfect but rather whether the services were reasonable under the circumstances. (*Id.* at pp. 598–599.)

An appellate court reviews a juvenile court’s finding that reasonable reunification services were provided for substantial evidence. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545 (*Misako R.*)). “In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all legitimate and reasonable inferences to uphold the verdict.” (*Ibid.*) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the [juvenile] court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321 (*Matthew S.*)).

B. DEPARTMENT PROVIDED REASONABLE FAMILY REUNIFICATION SERVICES

Father argues that the Department did not provide reasonable family reunification services in two areas: therapy and visitation. The main basis for father's arguments on appeal, based on his testimony at the contested 12-month hearing, is that there was always a message phone where he could be reached. Based on that testimony, father appears to argue that the social worker did not try hard enough to maintain contact with him. But father's testimony related to his efforts to maintain contact with the Department was *specifically discredited* by the juvenile court. The court stated: "I don't think father has appropriately stayed in contact with the department[,] as he was required to do." Father's testimony conflicted with the social worker's testimony that she could not reach father for months despite calling and leaving messages at multiple phone numbers. As evidence supported the juvenile court's finding and we are bound by the juvenile court's apparent credibility determination in favor of the social worker (*Matthew S., supra*, 201 Cal.App.3d at p. 321), we accept the juvenile court's determination that father failed to maintain contact with the Department.

1. Services Related to Therapy

Father argues that the Department failed to provide reasonable family reunification services because he was never referred to group therapy, as required by his reunification plan.

As father acknowledges, there was conflicting evidence regarding whether he was ever notified of the decision that he participate in group therapy. The social worker testified that she was told by the therapy provider that "they tried to contact him for the group therapy, but they weren't able to get ahold [*sic*] of him." Father testified that he was never informed that he was supposed to attend group therapy. And the supervising therapist testified that there was no reference in the records available to her that an effort had been made to contact father and that ordinarily there would be documentation if a clinician had attempted to contact a patient.

Father argues that his testimony and that of the supervising therapist was “far more compelling” than the social worker’s testimony. That argument ignores our standard of review, under which we view the evidence in the light most favorable to the Department and indulge all reasonable inferences in support of the juvenile court’s decision. (*Misako R.*, *supra*, 2 Cal.App.4th at p. 545.) Further, our task is not to assess the relative weight of competing evidence, but rather to look for substantial evidence. (*Matthew S.*, *supra*, 201 Cal.App.3d at p. 321.) The trial court was entitled to credit the social worker’s testimony that she had been told by the therapy provider that attempts to contact father had been unsuccessful. When considered together with the evidence that father had not maintained consistent contact with the Department, the social worker’s testimony supported the juvenile court’s finding that father bore at least some responsibility for the communication breakdown regarding participating in group therapy.

Even if the Department failed to contact father about participating in therapy, the error would be harmless. (See *People v. Watson* (1956) 46 Cal.2d 818, 837.) The juvenile court terminated father’s family reunification services not because he failed to obtain therapy but because he failed to maintain contact with the Department and he failed two drug tests. The evidence showed that attempts to reach father would likely have been futile because his phone number changed several times and messages left for him went unanswered. Father has not demonstrated a reasonable probability of a more favorable result even with further attempts by the Department to contact him.

2. Services Related to Visitation

Father argues that the Department did not do enough to facilitate visitation between him and his daughters once they moved to Southern California.

M.S. and J.R. moved from foster care in Monterey County to a maternal relative’s home in North Hollywood in February 2015. The social worker testified that father’s last visit occurred in April 2015, meaning that he had continued to visit the children for a period of time after they moved. The social worker further testified that she lost contact

with father between May and early July 2015 despite calling and leaving messages with several phone numbers father had provided. The social worker testified that she never had a discussion with father about going to visit his daughters. Father testified that he did not know he had the option of asking for help traveling south for a visit. As for arranging visitation, father described his understanding that he and the maternal relative would communicate directly about visits and whatever was decided, they would let the social worker know.

Father argues that the Department should have done more to facilitate visitation between him and his daughters, noting that the social worker drove mother to North Hollywood multiple times and never did the same for father. But the record supports an inference that father's failure to maintain contact with the Department was a major factor in his limited visitation opportunities. Father does not explain how the social worker was supposed to facilitate greater visitation when his actions made it impossible for her to even establish consistent contact with him. Further, father testified that he understood the visitation arrangement would involve him communicating directly with the maternal relative, suggesting that he knew he was responsible for doing so. Though father testified that he encountered difficulty reaching the maternal relative, father points to no evidence in the record showing that he made any attempt to inform the social worker about those difficulties. On this record, substantial evidence supports the juvenile court's finding that the Department provided father with reasonable family reunification services.

III. DISPOSITION

The order terminating father's family reunification services is affirmed.

Grover, J.

WE CONCUR:

Rushing, P.J.

Premo, J.

In re M.S. et al.; Monterey County Department of SES v. J.R.
H042820